

CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

ALAN McCOY,

Defendant and Appellant.

C067498

(Super. Ct. No. 10F02820)

ORDER MODIFYING OPINION

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that part II. of the opinion filed herein on August 29, 2012, which has been certified for partial publication, be modified as follows:

1. On page 14, at line 6 of continued footnote 6, which begins, "were the basis for the jury's verdict. (*Id.* at p. 876.)", insert additional citational material so that the citations now read:

(*Coelho*, at p. 876; but see *In re Coley* (Aug. 30, 2012, S185303) ___ Cal.4th ___ [2012 Cal. Lexis 8296, *75-*76 & fn. 18] [suggesting *Coelho* analysis is inconsistent with *Oregon v. Ice* (2009) 555 U.S. 160 [172 L.Ed.2d 517]].)

2. On page 16, at the second and third lines, which begin, "making sentencing choices. (*People v. Towne* (2008) 44 Cal.4th 63, 83-89.)", insert additional citational material, so that the citations now read:

(*People v. Towne* (2008) 44 Cal.4th 63, 83-89; cf. *In re Coley, supra*, ___ Cal.4th at p. ___ [2012 Cal. Lexis 8296 at pp. *68-*69] [an evaluation of a sentence pursuant to the Eighth Amendment of the federal Constitution may consider facts underlying verdict of acquittal].)

There is no change in the judgment. (*THESE MODIFICATIONS APPEAR IN PT. II., WHICH IS CERTIFIED FOR PUBLICATION.*)

THE COURT:

NICHOLSON, Acting P.J.

BUTZ, J.

HOCH, J.